

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT WARDRICK,

Plaintiff,

v.

H.J. MARBERRY,

Defendant.

Civil Action No. 06-217 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 20, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 19], filed on June 26, 2007, recommended that Defendant's motion to dismiss or in the alternative for summary judgment [Doc. No. 13] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendant. Untimely objections were filed by Plaintiff on July 23, 2007 [Doc. No. 21] which the Court has reviewed *nunc pro tunc*. After de novo review of the motion and documents in the case, together with the Report and Recommendation, and objections thereto, the following order is entered:

AND NOW, this 20th day of August, 2007;

IT IS HEREBY ORDERED that Defendant's motion to dismiss or in the alternative for summary judgment [Doc. No. 13] is GRANTED.

The Report and Recommendation [Doc. No. 19] of Magistrate Judge Baxter, filed on June 26, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge